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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 212

FRED BARNETT AND EDNA M. BARNETT,
Petitioners,

vs.

RECONSTRUCTION FINANCE CORPORATION,
A CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR REHEARING.

DOMINIC P. SEVALD,
502 Hammond Building,
Hammond, Indiana, and
FRED BARNETT,
313 Hammond Building,
Hammond, Indiana,
Counsel for Petitioners.

THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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Come now Fred Barnett and Edna M. Barnett, the above-named petitioners in this cause, and present this their petition for a rehearing of their petition for a writ of certiorari in this cause.

I.

Jurisdiction.

Petition for writ of certiorari to the Seventh Circuit was filed June 26, 1941, and was denied on October 13, 1941.

II-A.

Reasons for Petition for Rehearing.

The petition for certiorari presented two questions in chief as the errors committed by the Seventh Circuit,—first, as to the effect of the Indiana foreign corporation act. This act makes unenforcible a contract of a foreign corporation which comes into the state, transacts its corporate business therein, fails to obtain a license therein as a foreign corporation, and then is dissolved or otherwise suspends its corporate existence. The Seventh Circuit, in its opinion in the cause, disregards this inhibition and holds that so long as the transaction involved is not illegal it can be enforced in the federal court, whether or not the corporation complies with the foreign corporation act of the state. If the opinion rendered below is allowed to stand, that section of the Indiana foreign corporation act in question is a nullity and becomes ineffective for any purpose whatsoever. This position is not in accord with the decisions of this Honorable Court which we have set out in the brief accompanying our petition, namely: *The Wichita Royalty* case (306 U. S. 103), and *The Equitable Life Insurance* case (..... U. S. ....., 85 L. ed. 361).

II-B.

The second question is the effect of the decision of the Appellate Court of Indiana in the cause of *Barnett* v. *Central Republic Bank & Trust Co.* (100 Ind. App. 495). That decision is final and becomes and is the law of the case, and would control the action of a trial court in any further proceedings brought in a state court of Indiana, and would be binding upon it. This is the doctrine laid down in the *Erie R. R. Co.* v. *Tompkins* case (304 U. S. 64), *Equitable Life Ins. Co.* v. *Halsey Stuart & Co.* (85 L. Ed. 631), and

numerous other cases cited under Proposition III, page 17 of our brief in support of our petition.

If the opinion of the Seventh Circuit is permitted to stand, then hereafter a Federal District Court or a Federal Circuit Court of Appeals is at liberty to absolutely disregard and override a decision made by a state court of last resort, where the same cause is submitted on the same evidence.

III.

Public Importance.

It is a question of great public concern that the uniformity of decisions among and between the state and federal courts be maintained and that each shall respect the judgments and decisions of the other.

In the *Erie R. R.* case the court very clearly pointed out the abuses which had arisen under the former attitude of the federal courts with respect to their freedom to follow or disregard the state law or state court decision. And the court therein declared that hereafter the state law or decision would be followed. To the same effect is the *Stoner* case, and several others which we have discussed in our brief.

By the decision of the Indiana Appellate Court, it has been determined that recovery on this note and mortgage cannot be enforced against petitioners or the property involved. For this court to now decline to disturb the opinion of the circuit court below, petitioners would be and are deprived of an adjudication rendered in their favor by a duly constituted court having complete jurisdiction of the subject matter involved, and whose jurisdiction was invoked by the then owner of these securities. After the rendition of this decision no petition to reconsider or for a rehearing was ever filed, and on remand to the trial court the plaintiff voluntarily dismissed its action.

IV.

For the foregoing reasons, petitioners respectfully urge that a rehearing be granted them, and that upon further consideration the order of October 13, 1941 denying their petition for writ of certiorari be revoked, and that a writ of certiorari issue herein.

Respectfully submitted,

DOMINIC P. SEVALD, and
FRED BARNETT,
Counsel for Petitioners.

October, 1941.

We, the undersigned Dominic P. Sevald and Fred Barnett, Counsel for Petitioners herein, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith, and not for delay.

DOMINIC P. SEVALD, and
FRED BARNETT,
Counsel for Petitioners.